IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.428/2002

Shriprasad S. Patil,
major, resident of 1st Floor,
Landscape Alfer Residency,
Caranzalem, Panaji, Goa. ..... Petitoner.

V/s.

1. B.P.L. Cellular Ltd.,
a Company incorporated under
the Companies Act, 1956, having
its Head Office at BPL Telecom
Centre, No.54, Richmond Road,
Bangalore.

2. B.P.L. Cellular Ltd.
42/A, Shukrawar Peth,
Hirabang Pune.

3. B.P.L. Cellular Ltd.,
6th Floor, City Centre,
Pato Plaza, Panaji, Goa,

4. Mr. Rajesh Shetty,
Branch Manager, BPL Cellular Ltd.,
6th Floor, City Centre,
Pato Plaza, Panaji, Goa. .... Respondents.

Mr. P.A. Kholkar, Advocate for the petitioner.

Mr. A. Monteiro, Advocate for respondents No.1 to 3.

CORAM : P.V. HARDAS, J.

DATE : 20TH FEBRUARY, 2003.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. By consent of the parties, the petition is heard for final disposal at the stage of admission.

2. This petition has been filed by the petitioner, who is the original plaintiff in Regular Civil Suit No.130/99/C pending on the file of Civil Judge, Junior Division, at Panaji. The said suit is for declaration and permanent injunction. The relief claimed by the present petitioner in the said suit is for a declaration that the plaintiff is in continuous service of defendant No.1 and for a permanent injunction to restrain the defendants from stopping the plaintiff from attending the office and performing his duties attached to his post. There is also a prayer for permanent injunction to restrain the defendants from evicting the plaintiff from company accommodation.

3. The present petition challenges the order passed by the Civil Judge, Jr. Division, Panaji, dated 31.7.2002, dismissing the application of the plaintiff for amendment of the suit. The learned trial Court had dismissed the application for amendment on the grounds: (i) that the suit filed by the plaintiff was not maintainable; and (ii) by allowing the amendment, the jurisdiction of the learned trial Court would be ousted.

4. By the present amendment, the plaintiff seeks to incorporate certain subsequent events and lay his claim for the monetary benefits arising from his

contract of employment. Mr. P.A. Kholkar, the learned Counsel appearing on behalf of the petitioner/ plaintiff has invited my attention to the Division Bench Judgment of this Court in **Benisham Mohanlal Khetan** v/s. **Mahadeo Tukaram Borkar,** AIR 1985 Bombay 462, in which the Division Bench of this Court has held that a Civil Court under Order 6, Rule 17 can allow the plaint to be so amended as to result in ousting its own jurisdiction in the matter. The Division Bench also held that in case the amendment is allowed and carried out, the proper course to be followed is to return the amended plaint to the plaintiff for presentation to the proper Court under Order 7, Rule 10 of C.P.C. This is first reason for rejection of the amendment application which is not sustainable.

5. The second reason given by the learned trial Judge rejecting the amendment application is that the plaint itself is not maintainable. An amendment application cannot be rejected on the ground that the suit is not maintainable, particularly when the suit is yet to be decided and a finding regarding maintainability of the suit is yet to be rendered. I have perused the amendment application. This is a pre-trial amendment and in order to avoid the multiplicity of suits, the amendment ought to have been allowed. The proposed amendment does not, in any

manner, conflict with the reliefs which are sought. The relief which the plaintiff is claiming in the amendment application, are the subsequent events to the filing of the suit by the plaintiff.

6. For the aforesaid reasons, the order impugned in the present petition is unsustainable in law and, therefore, deserves to be quashed and set aside. In the result, therefore, Writ Petition No.428/2002 is, allowed. The order impugned in the present petition dated 31.7.2002, passed by the Civil Judge, Jr. Division, Panaji in Regular Civil Suit No.130/99/C is, hereby, quashed and set aside and the amendment application filed by the plaintiff is allowed. Rule made absolute on the above terms, with no order as to costs.

P.V. HARDAS, J.

ssm.